



July 26, 2000

Mr. Richard O. Burst  
County Of Cameron  
964 East Harrison Street  
Brownsville, Texas 78520

OR2000-2814

Dear Mr. Burst:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 137387.

The Cameron County Sheriff's Department (the "department") received two requests for information from an attorney who is representing a named individual. The first request is dated May 12, 2000 and the second request is dated May 15, 2000. The second request includes the information requested in the first request.<sup>1</sup> The second request seeks the following information:

[A] list of [and any and all documents reflecting] the names of all deputies [in the department] who have been involved in vehicular accidents with their units, whether on or off duty, and who continue to be employed with the department [or continued to be employed with the department at the time of the named individual's accident], the number of accidents each has had, and the date of each accident[; and]

[A]ny and all documents reflecting insurance policies covering deputies while employed with [the department; and]

[A] complete copy of [the named individual's] personnel file.

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<sup>1</sup>The first request seeks "a list of the names of all deputies [in the department] who have been involved in vehicular accidents with their units, whether on or off duty, and who continue to be employed with the department, the number of accidents each has had, and the date of each accident;" and "a complete copy of [the named individual's] personnel file."

You claim that the requested information, other than the named individual's personnel file, is excepted from disclosure under section 552.103 of the Government Code. You have submitted comments to this office in correspondence dated May 17 and June 2, 2000, and additional information in exhibits marked by you as "A" through "I." The requestor has also submitted comments and supporting information to this office. See Gov't Code § 552.304. We have considered the exception you assert and reviewed the submitted information.

We note at the outset that section 552.301 of the Government Code dictates the procedure that a governmental body must follow in asking the attorney general for a decision to determine whether information requested under the Act falls within an exception to disclosure. Among other requirements, the governmental body, "must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10<sup>th</sup> business day after the date of receiving the written request." Gov't Code § 552.301(b). Additionally, "no later than the 15<sup>th</sup> business day after the date of receiving the written request," the governmental body must submit to the attorney general:

- (A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

- (B) a copy of the written request for information;

- (C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and

- (D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1).

In light of the above, we first address information that the department has apparently withheld from the requestor without seeking a decision from this office. Exhibit "I" contains a letter from you to the requestor indicating that you released a copy of the requested personnel file, but that you withheld information contained in the file, specifically a "TCIC/NCIC report" and an "Employer's First Report of Injury Or Illness (medical record)." The letter further states that the "medical record" will be sent if the requestor provides "an Authorization to Release Medical Information" signed by the requestor's client. Your request for a decision of this office does not address the information that exhibit "I" indicates you have withheld, nor do we otherwise have any indication that you have requested a decision from this office as to the withheld reports. See also Gov't Code § 552.301(a) (absent a previous determination as to the precise information at issue, governmental body *must* ask for a decision from the attorney general about whether requested information that

governmental body seeks to withhold falls within one of the Act's exceptions to disclosure). Thus, you have not complied with any of the requirements of section 552.301 with respect to the information that was withheld from the requested personnel file.

We next address the provisions of section 552.301 with respect to your request for a decision. We note that both requests for information indicate on their face that a copy was sent to the department by facsimile, and that a copy of each request was also sent to the department by certified mail with return receipt requested.<sup>2</sup> You have not provided a statement of when the department received either copy of the request dated May 12, nor have you stated when the department received the mailed copy of the request dated May 15. However, as to the May 12 facsimile request, exhibit "I" contains a copy of a facsimile cover page that evidently relates to that request. We believe the information on this facsimile cover page constitutes "evidence sufficient to establish" that the facsimile copy of the May 12, 2000 request was received by the department on May 12, 2000. *See* Gov't Code § 552.301(e)(1)(C). With respect to the mailed copies of both requests, however, the department has not complied with subsection 552.301(e)(1)(C) because we have been provided with no information as to when the department received either mailed request. Additionally, we have not been provided with a copy of the specific information requested, or representative samples of that information, as required by subsection 552.301(e)(1)(D).<sup>3</sup>

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<sup>2</sup>As to the May 12 request that the department received by facsimile, you state in the letter to the requestor contained in exhibit "I" that because the request was sent by facsimile and was not addressed to the public information officer or the sheriff, "no response is necessary" pursuant to Gov't Code § 552.301(c) (defining a request under the Public Information Act to include "a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile"). We agree that where a written request is sent to the department only by electronic mail or facsimile transmission and the request is not sent to the officer for public information or the person designated by that officer, section 552.301(c) permits the department to not respond to the request. However, the letter in exhibit "I" indicates that the department nevertheless elected to respond to the May 12 facsimile request. As to the May 15 facsimile request, you make no argument pertaining to subsection 552.301(c). We thus understand your request for a decision to this office to indicate that the department also elected to respond to this request. Moreover, although subsection 552.301(c) may be applicable to the copies of the requests received by facsimile, we note that this provision is inapplicable to the copies of the written requests that the department evidently received in the mail.

<sup>3</sup>You represent that the "list" requested in both requests "does not exist." It is thus apparent that you believe the department is not obligated to respond to the requests for a "list" on the basis that otherwise responsive information held by the department does not happen to exist in the form of a list. We disagree. This office has stated that a governmental body has a good faith duty to relate a request to that information which it holds. Open Records Decision No. 561 at 8 (1990); *see also* Gov't Code § 552.222 (permitting governmental body to ask requestor to clarify request if what is being requested is unclear to the governmental body). Thus, we do not believe that the mere fact that the requests specify a "list" relieves the department of its duty to relate the request to responsive information held by it, or to submit that information (or representative samples) for our review. Moreover, as indicated above, the May 15 request also states that the requestor seeks "any and all documents reflecting" the precise information that was also requested in "list" form.

We note that where a governmental body “does not request an attorney general decision *as provided by section 552.301*,” the requested information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302 (emphasis added). You have apparently withheld information from the personnel file on the basis that you believe the information is considered to be confidential by law. This office has stated that a compelling reason to withhold information exists where the information at issue is made confidential by another source of law. Open Records Decision Nos. 26 (1974), 150 (1977). However, with respect to the personnel file information that was evidently withheld from the requestor, you have neither submitted the information nor provided any comments or arguments in support of the confidentiality of the information. With respect to the remaining information that is responsive to the requests, you also have not submitted this information for our review. From the limited information you have provided this office, we are unable to determine whether any of the responsive information is made confidential by another source of law. Thus, we have no basis for concluding that the department must withhold any of the information that is responsive to the requests. As to the sole exception that you assert, section 552.103 of the Government Code, we note this is a discretionary exception which does not constitute a compelling reason to withhold information from the public. Open Records Decision No. 473 (1987). Because you have not demonstrated a compelling reason to withhold any of the responsive information, we have no choice but to order, pursuant to section 552.302 of the Government Code, the release of all of the information that is responsive to the requests. We caution, however, that the Act provides for criminal penalties for the improper release of confidential information. *See* Gov’t Code § 552.352. Thus, if you believe the responsive information or any portion thereof is confidential and cannot lawfully be released, you must challenge this decision in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

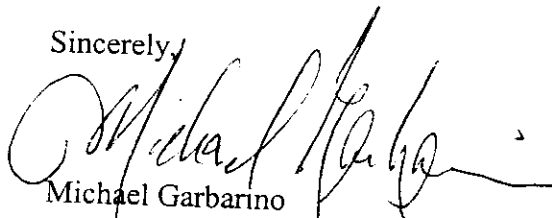
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 137387

Encl. Submitted documents

cc: Mr. Francisco J. Zabarte  
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(w/o enclosures)